



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**GERARD GREGA,
Requester**

v.

**WEATHERLY AREA SCHOOL
DISTRICT,
Respondent**

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Docket No: AP 2021-0751

INTRODUCTION

Gerard Grega¹ (“Requester”) submitted a request (“Request”) to the Weatherly Area School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking meeting minutes. The Request was denied, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **dismissed as moot**, and the District is not required to take additional action.

FACTUAL BACKGROUND

On March 2, 2021, the Request was filed, seeking in relevant part:

[A]n electronic COPY of...the official WASD School Board Caucus (OR) Regular Meeting “Minutes” where the Professional Development Leave of Absence (Sabbatical) was “APPROVED” by the School Board for Alexandra Fedorko, a full-time teacher at WASD....

¹ Mr. Grega is a member of the District’s Board of School Directors.

On April 6, 2021, after a thirty-day extension to respond, 65 P.S. § 67.902(b), the District granted the Request directing the Requester to the District website for the August 19, 2020, meeting minutes.

On April 9, 2021, the Requester appealed to the OOR challenging the sufficiency of the records provided and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On April 20, 2021, the District submitted a position statement, verified under penalty of perjury by District Solicitor Jeffrey Rockman, that the District had provided the requested minutes on April 6, 2021, and arguing that the appeal is moot.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing

to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Requester asserts that the minutes do not reflect Board approval of a leave of absence, but rather the adoption of a Memorandum of Agreement (“MOA”) to consider the leave request. The Requester provided a copy of the meeting minutes as well as the MOA.

The District, on the other hand, asserts that the appeal is moot because on April 6, 2021, the District provided access to the requested minutes. Attorney Rockman verifies that the MOA

is an agreement between the District and the Weatherly Education Association to grant the leave of absence.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the District has acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

A review of the MOA reveals that is an agreement between the District, the Weatherly Education Association and Ms. Federko addressing Ms. Federko’s requested leave of absence for professional development. Although the terms of the MOA do not clearly state that it is an agreement to grant the required leave, it is clear that the parties subject to the MOA perceive it and have treated it as such. Because the parties treat the MOA as having granted the leave of absence, and because the MOA was approved at the August 19, 2020, meeting, the District has provided the requested records and the appeal is moot as there are no remaining issues for the OOR to adjudicate.

CONCLUSION

For the foregoing reasons, the appeal is **dismissed as moot**, and the District is not required to take any additional action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Carbon County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section

1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: May 3, 2021

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

Sent to: Gerard Grega (via email only);
Jeffrey Rockman, Esq. (via email only);
Theresa Barna (via email only)

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).